

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 09-10006-RGS

UNITED STATES OF AMERICA

v.

DANIEL SMITH

NOTICE REGARDING
CERTIFICATE OF APPEALABILITY

February 6, 2014

STEARNS, D.J.

On August 21, 2013, Daniel Smith petitioned the court to set aside his conviction and vacate his guilty plea pursuant to 28 U.S.C. § 2255. Smith alleged that the government's failure to disclose the now well-publicized misconduct of former state chemist Annie Dookhan rendered his plea involuntary and violated his right to due process. *See Brady v. United States*, 397 U.S. 742 (1970); *Brady v. Maryland*, 373 U.S. 83 (1963). Like the petitioners in *United States v. Wilkins*, 2013 WL 189961 (D. Mass. May 8, 2013), Smith did not make a claim of actual innocence. Rather, the premise for his petition was that, "if he knew that the Dookhan test results and physical evidence that had been in Dookhan's possession was likely inadmissible [or greatly weakened in credibility], he would not have entered a guilty plea." Pet.'s Mot. at 30. On December 20, 2013, the court, after noting the overwhelming

evidence of Smith's guilt that had nothing whatsoever to do with Dookhan, denied the motion to vacate the plea and conviction.

On January 16, 2014, Smith appealed the court's decision. Although no Certificate of Appealability was sought, any request pursuant to 28 U.S.C. § 2253, authorizing an appeal of the court's Order, will be prospectively DENIED, the court being unable to identify any substantial showing by Smith of a denial of a constitutional right.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE